

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
BERG'S ENTERPRISES,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHE No. 313

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The formal hearing on the appeal of Berg's Enterprises to a Notice of Civil Penalty of \$50.00 for an alleged open burning violation of respondent's Regulation I came before the Board with all members present, Walt Woodward presiding, on May 22, 1973 in Seattle, Washington.

Appellant appeared through its secretary, Emery Berg; respondent through its attorney, Keith D. McGoffin.

Having heard the testimony and being full advised, the Board makes the following

FINDINGS OF FACT

I.

On January 30, 1973, a fire in an open barrel was observed by an inspector on respondent's staff in front of appellant's building, but on State highway right of way property, at 58 Navy Yard Highway, Bremerton, Washington. No permit had been issued for the fire. While the fire was in progress, an employee of appellant emerged from appellant's place of business carrying boxes which he deposited near the burn barrel.

II.

Notice of Violation No. 5608, a citation for burning in a burn barrel with no controls and Notice of Violation No. 5609, a citation for an open fire, were duly mailed to appellant. Notice of Civil Penalty No. 681, the subject of this appeal, was thereafter mailed to appellant, citing Section 9.02 (open burning) of respondent's Regulation I.

III.

The fire was of auto part boxes and rags, which were articles customarily to be found in appellant's place of business.

IV.

Respondent's inspector attempted to question appellant's employee concerning the fire, but Mr. Berg would not allow him to respond. Appellant admitted to ownership of the barrel and that his employee knew of the existence of the fire.

V.

Section 9.02 of respondent's Regulation I, as amended, makes it unlawful to cause or allow any outdoor fire in a restricted area.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 The site of the fire was in such a restricted area and was otherwise
2 not permitted by respondent's Regulation I.

3 From which the Board makes the following

4 CONCLUSIONS OF LAW

5 I.

6 On an agency principle of law, notice of the fire by appellant's
7 employee constituted notice to the appellant.

8 II.

9 Appellant was in violation of Section 9.02 of respondent's
10 Regulation I, as amended, for allowing an outdoor fire.

11 From which the Board enters this

12 ORDER

13 The appeal is denied and the Notice of Civil Penalty is affirmed.

14 DONE at Lacey, Washington this 5th day of June, 1973.

15 POLLUTION CONTROL HEARINGS BOARD

16 Walt Woodward
17 WALT WOODWARD, Chairman

18 W. A. Gissberg
19 W. A. GISSBERG, Member

20 James T. Sheehy
21 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER